

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE:        ILLINOIS DEPARTMENT        )  
              OF TRANSPORTATION and        )  
              STATE USE COMMITTEE        )        OEIG Case #15-01333

OEIG FINAL REPORT (REDACTED)

Below is an amended final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General, and to the Illinois Department of Transportation and to the State Use Committee via Central Management Services.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

**FINAL REPORT**

**I. INTRODUCTION**

During the course of a separate Office of Executive Inspector General (OEIG) investigation involving Illinois Department of Transportation (IDOT) contracts for janitorial services at rest areas, the OEIG uncovered information that IDOT was failing to set contract prices with the vendors as prescribed under the Administrative Code, and that the State Use Committee failed to make statutorily required determinations regarding contract prices before approving State Use Program contracts. The OEIG self-initiated this case to investigate these potential failures by IDOT and the State Use Committee.

## **II. BACKGROUND**

### **A. State Contracts With Sheltered Workshops**

Pursuant to the Administrative Code, the Chief Procurement Officer for General Services identifies to the State purchasing officers (SPO) and State agencies the supplies or services for which preference must be given to qualified not-for-profit agencies providing services to people with disabilities.<sup>1</sup> These not-for-profit agencies are known as “sheltered workshops.” Prior to conducting a competitive procurement or otherwise contracting for supplies or services on the preference list, the State agency shall “contact one or more of the sheltered workshops that provide the needed supply or service and attempt to negotiate a fair and reasonable contract at a price not substantially more than had it been competitively bid.”<sup>2</sup> In the event that the negotiations do not result in a fair and reasonable contract, the SPO may authorize an alternative procurement method.

### **B. The State Use Program And The State Use Committee**

If a State agency is seeking to procure services from a sheltered workshop, the agency goes through the State Use Program which is run through the Department of Central Management Services (CMS). The State Use Program is a statutorily created procurement preference program that allows State agencies to procure supplies and services from qualified not-for-profit agencies without advertising or calling for bids.<sup>3</sup> According to the State Use Website, all “proposed purchases [in the State Use Program] are independently reviewed and approved by the State Use Committee to ensure the finest quality and pricing available.”<sup>4</sup>

One of the powers and duties of the State Use Committee is to “review all bids submitted under [the State Use Program] and reject any bid for purchase that is determined to be substantially more than the purchase would have cost had it been competitively bid.”<sup>5</sup> The State Use Committee consists of 8 members, including the Director of CMS or his or her designee, the Director of the Department of Human Services (DHS) or his or her designee, and 6 public members appointed by the Governor.<sup>6</sup> The members serve without compensation (other than reimbursement for expenses).<sup>7</sup>

Prior to Fiscal Year (FY) 2016, State agencies wanting to procure services from a sheltered workshop would send the State Use Committee a written letter requesting approval of the bid (“request letter”). Beginning in FY 2016, the State Use Committee provided a form for agencies to use for these requests (“State Use Contract Request Form”<sup>8</sup>). The State Use Contract Request Form contains a section that specifically states, “For the Committee’s review required

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<sup>1</sup> 44 Ill. Admin. Code, Part 1, Section 1.4535(c).

<sup>2</sup> *Id.*

<sup>3</sup> 30 ILCS 500/45-35(a).

<sup>4</sup> State Use Website, <https://www.illinois.gov/cms/agency/stateuse/Pages/default.aspx>. (last visited January 5, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> The name at the top of the form is “State Use Contract Request Letter” but will be referred to as a “form” in this report to differentiate it from the letters that were sent prior to FY 2016.

by 30 ILCS 500/45-35(c)(8), please explain the Agency's determination that the Proposed Price is not substantially more than a price obtained through competitive bidding. This explanation should include a descriptive summary of the Agency's market research used to arrive at the determination."

### III. INVESTIGATION

#### A. IDOT's Role In Procuring Sheltered Workshop Contracts For Janitorial Services

For some time<sup>9</sup>, IDOT has contracted with sheltered workshops for janitorial services of the 54 rest areas in Illinois. Each rest stop is covered under a janitorial services contract and each contract is typically a two year contract. IDOT is divided into 9 Districts. For this investigation, the OEIG focused on the janitorial services contracts for the rest areas in District 9.<sup>10</sup>

##### 1. The OEIG's Review of IDOT's Requests to the State Use Committee

The OEIG requested copies of IDOT District 9's written requests to the State Use Committee for approval of contracts with sheltered workshops for janitorial services at its rest areas for the period July 1, 2008, through June 30, 2017, as well as the State Use Committees' responses to those requests. Prior to FY 2016, IDOT submitted a single letter requesting approval for all the rest area contracts throughout the State. The OEIG reviewed four letters for FY 2008 through 2013. Two of the four letters reviewed requested approval to contract for one fiscal year, and the other two covered requested approval for two fiscal years. Each of the four letters listed the rest area contacts for all IDOT Districts, the vendor name for each contract, and the total contract figure for each contract. The request letters did not list any price justification information, and no such information was attached to the letter.

In FY 2016, IDOT began to submit a State Use Contract Request Form for each contracting sheltered workshop, resulting in five separate requests for FY 2016 and 2017 for District 9. Additionally, some written requests covered two fiscal years. The five State Use Contract Request Forms for FY 2016 and 2017 stated the same response to the request for an agency determination that the proposed bid price is not substantially more than a price obtained through a competitive bidding process. IDOT's explanation was the following:

Rest Area maintenance contracts are not competitively bid because then they would *most likely* be higher than the prices paid to rest area vendors. [IDOT] does not have market research to verify this, but it is highly confident prices would be higher. (emphasis added)

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<sup>9</sup> The State Use Program has been in operation since 1983. At some point, IDOT began contracting with sheltered workshops through the program. IDOT [Employee 4] stated that IDOT had been contracting with sheltered workshops for over twenty years, but could not specifically identify what year the contracts were first issued. The OEIG reviewed documents indicating IDOT was using sheltered workshops since at least 2008.

<sup>10</sup> The investigation was limited to District 9 because the investigation that initially led to the self-initiation of this case began in District 9. The OEIG did not expand its investigation in this case to review sheltered use contracts in the other IDOT districts because the focus of this investigation was the State Use Committee and its duties in terms of reviewing the sheltered workshop contracts.

The State Use Committee approved all of IDOT's requests. Other than for FY 2010,<sup>11</sup> the State Use Committee's letters announcing the approvals stated that the State Use Committee had "reviewed the [contract price] and determined it was not substantially more than if the purchase had been competitively bid."

## **2. Interview of IDOT Employees Regarding IDOT's Process of Establishing State Use Program Contract Prices**

The OEIG attempted to find out how IDOT determined the pricing and percentage increases of the rest area janitorial services contracts through a series of interviews with IDOT employees who were involved in the contracting process. Between August 26, 2015, and March 29, 2016, the OEIG interviewed the following IDOT employees regarding the process IDOT follows in negotiating and setting contract prices for the State's rest areas:

<b><u>IDOT Employee</u></b>	<b><u>Position Title and Associated IDOT Bureau</u></b>
[Employee 1]	[Redacted]
[Employee 2]	[Redacted]
[Employee 3]	[Redacted]
[Employee 4]	[Redacted]
[Employee 5]	[Redacted] <sup>12</sup>
[Employee 6]	[Redacted]
[Employee 7]	[Redacted]

The employees said the following during their respective interviews.

[Employee 1] said that part of his duties during this temporary assignment included preparing documents, such as State Use Request Forms to the State Use Committee for approval to contract with sheltered workshops for janitorial services at the State's rest areas. [Employee 1] said that [Employee 2] had provided him with the monthly and annual contract prices for each contract in order for him to prepare the rest area contracts with the sheltered workshops. [Employee 1] said he did not know how IDOT determined the pricing for each sheltered workshop, however, he said that [Employee 5] determined what percentage of increase, if any, IDOT could pay the sheltered workshops for each new contract period.

[Employee 2] described her duties to include "all financial aspects" for the Bureau of Operations. [Employee 2] said that she completes the paperwork to start the process for contract

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<sup>11</sup> The responses to the FY 2010 requests merely stated that the State Use Committee had "voted to authorize your agency to contract with [vendor] without calling or advertising for bids." The FY 2010 approval letters had no language indicating that the State Use Committee had reviewed the contract price.

<sup>12</sup> [Redacted]

renewals and provides cost analysis for contracts. [Employee 2] said she did not know how IDOT determines pricing for a new vendor, or how it arrived at the initial cost for each rest area contract. [Employee 2] said she has never seen a bid for a rest area contract and that someone from the Director of Highways' office determined any annual increase. [Employee 2] said she prepared a pricing spreadsheet based on the contract pricing for the previous year and added the percentage increase. [Employee 2] said she then gave the spreadsheet to [REDACTED] to prepare the contracts. [Employee 2] said [Employee 3] entered the prices into the contracts.

[Employee 3] described her job duties to include secretarial duties, payroll and timekeeping, and that she had recently assisted [Employee 1] with the FY 2016 – 2017 rest area contracts. [Employee 3] said that [Employee 1] provided her with the annual and monthly contract costs for each contract on a spreadsheet. [Employee 3] said she received the pricing information from [Employee 1], and she just copied it into the contract. [Employee 3] had no knowledge of who calculated the increases or prepared the spreadsheet with the pricing information that she used. [Employee 3] said [Employee 4] from the Bureau of Business Services provides the total annual contract costs for each contract but she did not know how he arrived at these numbers. [Employee 3] said that the vendors are provided with the annual contract price and they input the unit costs into the contract.

[Employee 4] said he did not know how IDOT determined the initial annual costs of the contracts when the first rest area contracts were written, but it was IDOT's belief that the annual percentage increases were acceptable based on an assumption that the costs were fair and acceptable when the first rest area contracts were written. [Employee 4] said he thought that someone from Central Office or the Division of Highways determined the percentage of increase that was allowed per the annual budget. [Employee 4] said that the districts negotiate each contract price based on parameters that are provided by the IDOT Budget Office. When asked to explain the negotiation process that takes place between the districts and the sheltered workshops, [Employee 4] said that it is possible that the contracts are presented to the sheltered workshops on a "take it or leave it" basis. [Employee 4] explained that IDOT provides the sheltered workshops with a total annual cost of the contract and it is up to the sheltered workshops to fill in the pricing information for each category. [Employee 4] said that the contracts were based on the previous year's contract prices and annual percentage increases, which was an acceptable practice of the State Use Committee. [Employee 4] said that the information provided to the State Use Committee was the "best that can be done and what's been accepted over the decades."

[Employee 5] said that he did not provide contract pricing information and was not involved in determining the annual percentage increases for the rest area contracts. [Employee 5] said that he had no idea how IDOT determines that the contract price that is being offered to a sheltered workshop is not substantially more than a competitively solicited price. [Employee 5] said that he was not involved in the negotiations with the sheltered workshops, and those responsibilities would have fallen under the Bureau of Business Services and the Bureau of Operations.<sup>13</sup> [Employee 5] said that when it came time to review the rest area contracts he

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<sup>13</sup> [Employee 5] did not provide specific names but [Employee 1], [Employee 2], and [Employee 3] were all from the Bureau of Operations and were interviewed by the OEIG.

would contact [Employee 6], and ask her if there was any room in the budget to allow for annual increases.

[Employee 6] said that the Bureau of Business Services handles all of the rest area contracts, and she does not determine the percentage of increase of the rest area contracts. [Employee 6] explained that rest area maintenance is paid out of a \$13.5 million dollar appropriation that lapses each year, and as part of IDOT's budget development, her bureau asks Central Highways how much money that they will need for each category and requests justifications if there is a requested increase. [Employee 6] said that Central Operations makes one request for funding as a whole and does not divide the request by specific projects. [Employee 6] said that [Employee 2] is her contact person in Central Operations and said that she believes that someone from Central Highways or the Bureau of Business Services work on specifics of each contract to include increases.

[Employee 7] said the Bureau of Operations provides contract pricing information. [Employee 7] said he had requested IDOT's Office of Quality Compliance and Review conduct an audit of the rest area contracts in August 2013. [Employee 7] explained that he requested the audit because some of the sheltered workshops had expressed they were not being paid enough, and neither IDOT nor CMS could produce any type of analysis or report that would allow him to assess the true value of the services provided by the sheltered workshops. [Employee 7] did not follow up on this audit and it was never conducted. [Employee 7] said that he has never seen an audit or any type of market analysis of the rest area contracts.

### **3. IDOT Rest Area Contract Preparation and Requests to the State Use Program**

The OEIG also interviewed [Employee 1] and [Employee 4], and [Employee 8] on their roles in preparing rest area contracts including IDOT's requests made to the State Use Committee.

[Employee 1] said that part of his duties [redacted] included preparing documents, such as State Use Contract Request Forms, to the State Use Committee for approval to contract with sheltered workshops for janitorial services at the State's rest areas in all Districts. [Employee 1] said that the sheltered workshops who provided janitorial services at rest areas were already selected when he was appointed [identifying information redacted]. [Employee 1] said that the rest stop contracts are for a two year period and he was to ensure that all of the rest area contracts State wide were in place starting July 1, 2015, to ensure that there was no lapse in maintenance services.

[Employee 1] said that [Employee 3] forwarded copies of the rest area contract templates to him, and he used information from these templates to create the rest area contracts for FY2016 and FY2017. [Employee 1] confirmed that he did not conduct any market research or provide any market research information to the State Use Committee for the FY2016 and FY2017 rest area contracts. [Employee 1] said he "didn't try to reinvent the wheel," and used the information from previous written requests and forwarded them to the State Use Committee. [Employee 1] was asked to review the State Use Contract Request Forms dated March 2, 2015, for District 9 sheltered workshops in which IDOT stated that it was "most likely" that competitively bid

prices would be higher than those offered by the sheltered workshops, and that IDOT did not have any market research to verify this statement. After reviewing the response, [Employee 1] said he was not aware of any research or documentation that would show the price paid to the sheltered workshops was lower than a price obtained through competitive bidding.

[Employee 1] said that he was not aware of the State Use Committee making any requests for market research or competitive bid information prior to making a determination. [Employee 1] said that he would have been the person required to send the market research information to the State Use Committee when he sent the State Use Contract Request Letters, but to his knowledge IDOT has never asked for competitive bids and he was just following what IDOT had done for years.

[Employee 4] said that he serves as IDOT's [identifying information redacted]. [Employee 4] said that his duties include overseeing the procurement of supplies and services, including facilities services, which maintenance contracts fall under. [Employee 4] said that his duties regarding all IDOT rest area contracts in all IDOT Districts are to ensure that the Procurement Code and Rules are followed, specifically making sure that the Bureau of Operations is preparing the rest area contracts and that each IDOT district is reaching out to sheltered workshops to negotiate the contract prices.

[Employee 4] was asked to review the State Use Contract Request Forms dated March 2, 2015, for District 9 sheltered workshops in which IDOT stated that it was "most likely" that competitively bid prices would be higher than those offered by the sheltered workshops, and that IDOT did not have any market research to verify this. After reviewing the response, [Employee 4] said that IDOT did not provide any market research information to the State Use Committee because IDOT was not required to do so annually.

According to [Employee 4], IDOT has worked with sheltered workshops to provide cleaning services at the State's rest areas for over 20 years. [Employee 4] added that if the State Use Committee was not satisfied with the price, it could ask for additional information, but he was not aware of any instances in which the State Use Committee requested additional information from IDOT. [Employee 4] said that the State Use Committee determines if the contract price is appropriate based on fair market pricing, and if the State Use Committee doesn't feel that the contract price is being offered at fair market value then IDOT would review the consumer index, past contract pricing, and percentage increases to show that the contract pricing is of fair market value.

[Employee 8] said that his responsibilities include rest areas contract management in District 9. [Employee 8] said that all rest area contracts are generated by the Bureau of Operations which prepares the contracts and forwards them to a field representative in each district for review before the contracts are issued. [Employee 8] said that he serves as the field representative responsible for reviewing all rest area contracts for District 9. [Employee 8] said that he has reviewed rest area contracts since 2009. [Employee 8] said that once the Bureau of Operations finalizes the contract, the contract is sent to him, via email, so he can obtain the vendors' signatures. [Employee 8] said that he emails the contracts to the vendors and asks them to sign the contracts and email them back to him, and he sends them to Springfield. [Employee

8] was shown copies of a contract between IDOT and Wabash Area Vocational Enterprises (WAVE) for FY 2009, FY 2010, FY 2013, and FY 2014. [Employee 8] reviewed the pricing section and said that he did not know how IDOT established the contract pricing or who was responsible for calculating or entering the pricing information in the contract. [Employee 8] said he was not involved in creating the contract, contract renewal or establishing pricing.

## **B. The State Use Committee's Review Of Contract Prices Submitted By IDOT**

In order for a State agency to conduct business with a sheltered workshop without advertising or calling for bids, the State agency sends a written request outlining the type of contract, its duration and contract amount to the State Use Program. The agency must also submit justification that the price is not substantially more than had it been competitively bid. The contract information is summarized on State Use Committee Vote Sheets by State Use Program staff and presented to the State Use Committee for a vote on approval. If a contract is approved, the agency receives a letter indicating the approval. In voting for the District 9 FY 2016 and 2017 rest area contracts, the State Use Committee reviewed copies of IDOT's State Use Contract Request Forms and the Vote Sheet before voting to approve all the contracts.

### **1. State Use Committee Vote Sheets**

State Use Committee members are provided with vote sheets when they meet to vote on state use contracts. The name of each sheltered workshop that has a proposed contract with a State agency to be voted on is included in the vote sheet, as well as the amount of each contract. Each member votes yes, no, or abstains from voting by indicating Y, N, or A on a box on the vote sheet.

In addition, the vote sheet includes a section describing a "fair market price," and providing guidance on what members should consider when voting on the contracts. The section reads as follows:

Fair Market Price – The Illinois Procurement Code requires that qualified sheltered workshops offer a fair market price to state agencies in order to meet specific needs for supplies and services. As not-for-profit organizations, pricing offers developed by workshops are designed to cover costs. In turn, state agencies ensure prices offered by sheltered workshops (often through negotiation) are acceptable (from a budgetary perspective) and are comparable to those paid historically or those paid for similar contracts. When considering contract proposals, the State Use Committee not only takes into account the development process of the pricing offer, but also considers the intent of the State Use Program – to promote employment opportunities for persons with disabilities. Further, under a total cost of ownership model, the Committee considers the fact that if these individuals were not given this opportunity, they would be forced to be supported by other social service programs, thus costing the state additional monies.



After the Fair Market Price section, there is a section where the State Use Committee members sign the vote sheet attesting that “as a member of the Committee, I have reviewed these proposals and have determined, based on the facts presented, both above and in discussion with the other Committee members and with the State Use staff, that the prices offered are reasonable and would not be substantially more if this procurement were to be competitively bid.”

## **2. The OEIG’s Review Of Minutes Of The State Use Committee Meeting Held on April 19, 2013**

As part of the investigation, the OEIG searched the State Use Program website for State Use Committee minutes relating to the voting on State Use Program contracts. During this search, the OEIG discovered the minutes from the April 19, 2013, meeting of the State Use Committee, where State Use Committee members discussed their role with regard to reviewing fair market analysis before voting on State Use Program contracts.

The OEIG reviewed the State Use Committee minutes for the April 19, 2013 meeting.<sup>14</sup> The minutes reflected that during the meeting, the Senior Procurement Compliance Manager Joel Meints of the Executive Ethics Commission expressed concern that he had not seen a cost analysis for various proposed State Use Program contracts that were reviewed before the State Use Committee for a vote. According to the minutes, Mr. Meints said he “does not understand how the [State Use Committee] can approve these contracts without seeing the analysis.” State Use Committee member Christine Dickey responded to Mr. Meints’ concerns by stating that “historically, [the State Use Committee] has not seen the fair market analysis before.” Ms. Dickey added that she assumed that the State Use Program staff reviewed the fair market analysis information and then presented it to the State Use Committee.

Later in the meeting, State Use Committee member Seymour Bryson stated that he had been there “since the first meeting of State Use back in the 80’s...[and the State Use Committee] always assumed the issues of price were handled by the [State Use Program staff], they are the professionals, [the State Use Committee] accepted their recommendations.” Dr. Bryson said the State Use Committee “does not have time to deal with those kind of issues.”

## **3. Interview of Former Senior Procurement Compliance Monitor Joel Meints**

On January 26, 2016, the OEIG interviewed former Senior Procurement Compliance Monitor Joel Meints. As a Procurement Compliance Monitor, Mr. Meints was authorized under the Procurement Code to review any procurement as directed by the Chief Procurement Officer.<sup>15</sup> Mr. Meints said that former Chief Procurement Officer for General Services (CPO-

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<sup>14</sup> [https://www.illinois.gov/cms/agency/stateuse/Pages/StateUseMeetingMinutes4\\_19\\_2013.aspx.aspx](https://www.illinois.gov/cms/agency/stateuse/Pages/StateUseMeetingMinutes4_19_2013.aspx.aspx) (last visited February 10, 2016).

<sup>15</sup> “The procurement compliance monitor shall: (i) review any procurement, contract, or contract amendment as directed by the Executive Ethics Commission or a chief procurement officer; and (ii) report any findings of the review, in writing, to the Commission, the affected agency, the chief procurement officer responsible for the affected agency, and any entity requesting the review. The procurement compliance monitor may: (i) review each contract or contract amendment prior to execution to ensure that applicable procurement and contracting standards were followed; (ii) attend any procurement meetings; (iii) access any records or files related to procurement; (iv) issue reports to the chief procurement officer on procurement issues that present issues or that have not been

GS) Matt Brown instructed him to review the sheltered workshop contracts that were going to be voted on at the April 19, 2013, State Use Committee meeting because there were some concerns regarding how those contracts were being awarded. Mr. Meints said that in his review of those contracts, he was unable to locate any fair market research information for any of the IDOT contracts.

Mr. Meints said that he addressed the State Use Committee during the meeting and said that he did not understand how the members could vote on contracts when they had not reviewed the documentation that they were statutorily required to review, such as the fair market analysis information to ensure that the proposed price for each contract was not substantially more than a price would be if the contracts were competitively bid. Mr. Meints said that some of the members stated they have never received or reviewed a fair market analysis and there was a lot of discussion among the committee questioning if it was CMS or the requesting agencies responsibility to provide the analysis to the committee. Mr. Meints said that the State Use Committee approved all of the contracts contained on the vote sheet for that meeting.

Following the meeting, and after discussions with Mr. Brown, Mr. Meints stated that he sent Ms. Daley, [REDACTED], and former CMS Deputy Director of Strategic Sourcing Mitzi Loftus an email placing a hold on the sheltered workshop contracts until CMS provided him with documentation verifying that an analysis was completed to determine that the bids submitted were not substantially more than if they had been competitively bid. Mr. Meints said that he recalled receiving a memorandum from former IDOT Agency Purchasing Officer Dante Watson that contained what he considered to be market analysis information. Upon receipt of this information from Mr. Watson, Mr. Meints released the contracts.

#### **4. IDOT Bureau Chief Dante Watson's Letter to the State Use Committee**

On April 29, 2013, ten days after the State Use Committee sent IDOT an approval letter for the July 1, 2013 to June 30, 2015, contracts, IDOT Bureau Chief Dante Watson wrote the State Use Committee a letter explaining IDOT's contract prices. Mr. Watson wrote that, for the contracts the State Use Committee had approved on April 19, 2013, IDOT's "analysis shows that the average cost increase across the 33 contracts was 3.58% between FY12 and FY15." Mr. Watson further wrote that based on a review of the Consumer Price Index for Wage Earners and actual and projected numbers by IDOT's financial forecasting service, the overall increase in the Index would be 4%. Mr. Watson's letter concluded that therefore, "[IDOT] does not believe that competitive bidding would result in lower costs for these services." The letter contained no analysis of what price would be expected to result from competitive bidding.

#### **5. Interview Of The Acting Chief Procurement Officer For General Services Ellen Daley**

On January 28, 2016, the OEIG interviewed Acting CPO-GS Ellen Daley regarding the State Use Committee's role in determining whether the price of a sheltered workshop contract is

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corrected after consultation with appropriate State officials; (v) ensure the State agency is maintaining appropriate records; and (vi) ensure transparency of the procurement process." 30 ILCS 500/10-15(b).

substantially more than would result from a competitive bid. Ms. Daley said she was appointed the Acting CPO-GS on July 1, 2015, by the Executive Ethics Commission (EEC) and is waiting for Senate confirmation. Prior to her appointment as Acting CPO-GS, Ms. Daley served as the Deputy General Counsel for Strategic Sourcing at CMS. Ms. Daley said that in her current role as the Acting CPO-GS, she is the ultimate procurement authority for General Services and is responsible for enforcing regulations and compliance with the Procurement Code and Administrative Rules.

The OEIG provided Ms. Daley a copy of the April 19, 2013, State Use Committee Meeting Minutes, and after reviewing the document, she confirmed that she attended the meeting in her capacity as CMS Deputy General Counsel. Ms. Daley said that there was some heated discussion between the State Use Committee members regarding who was responsible for providing market research information and who was responsible for making the determination that the proposed contract price was not substantially more than the price would be if the contracts were competitively bid. Ms. Daley said that since the April 19, 2013, meeting several changes were made to the State Use Committee review process, such as, requiring requesting agencies to use the State Use Contract Request Form. Ms. Daley said that as CPO-GS she requires the State Use Committee to review market research information prior to voting on a contract.

Ms. Daley stated that it was the requesting agency, such as IDOT, that was required to conduct market research and provide the information to the State Use Committee for review. Ms. Daley said that it was then the State Use Committee's responsibility to review the market information and determine that the offered price is not substantially more than the price would be if the contracts were competitively bid. Ms. Daley said this is the process that is identified in the Administrative Code, which she follows and requires the State Use Committee to follow.

Ms. Daley was asked to review the answer provided on page 2 of the State Use Contract Request Letter sent to the State Use Committee on March 2, 2015, which read "Rest Area maintenance contracts are not competitively bid because then they would most likely be higher than the prices to be paid to rest area vendors. [IDOT] does not have market research to verify this, but it is highly confident prices would be higher." Ms. Daley said that based on the information the OEIG was providing, IDOT's letter was inadequate and did not represent market research. Ms. Daley was asked if she would accept IDOT's response alone as market research and she said "No," she would require market research information. Ms. Daley reiterated that like her predecessor former CPO-GS Matt Brown, she was requiring the State Use Committee to review market research information prior to voting on contracts.

## **6. Interview Of State Use Committee Chairperson Mitzi Loftus**

On October 6, 2015, the OEIG interviewed CMS Deputy Director of the Bureau of Strategic Sourcing Mitzi Loftus. Ms. Loftus said she has been in her position for approximately three years. Among her duties, Ms. Loftus said she manages the State Use Program and for the past one and one half years she has served as the designated chairperson of the State Use Committee.

Ms. Loftus explained that when an agency wants to use a sheltered workshop, the agency must complete a State Use Contract Request Form and submit it to the State Use Committee. Ms. Loftus said that, prior to her appointment as Deputy Director of Strategic Sourcing, the State Use Committee did not require the agencies to justify their contract pricing. Ms. Loftus said she currently requires a statement from the agencies justifying the contract price. When asked if the agencies are required to provide the State Use Committee with market research to show that the price to use a sheltered workshop is not substantially more than a price obtained through the competitive bidding process, Ms. Loftus said, "Technically no." Ms. Loftus said that it is the requesting agency's responsibility to make a determination that the sheltered workshop contract price is not substantially more than the price that would have resulted from a competitive bid as required by Section 4-35(c)(8) of the Procurement Code. Ms. Loftus said that this interpretation of the statute, leaving the determination to the agency, was communicated to her by CMS attorneys in 2013.

Ms. Loftus said that the State Use Contract Request Form contains a section where the agency is required to "go on record" as saying that the agency has made a determination that the contract price is not substantially more than the price would be if the contract was competitively bid. Ms. Loftus said she did not believe that the agency was required to prove their determination, but that the agency just needed to go on record saying that it had made a determination. Ms. Loftus was asked to review IDOT's pricing justification on the State Use Contract Request Form, which was, "Rest Area maintenance contracts are not competitively bid because then they would most likely be higher than the prices paid to rest area vendors. [IDOT] does not have market research to verify this, but it is highly confident prices would be higher." Ms. Loftus said that this statement verified that IDOT made a cost determination. When asked if the State Use Committee found the response acceptable despite IDOT's indication that they had not conducted market research, Ms. Loftus said IDOT was not required to conduct market research and the State Use Committee accepted the information IDOT provided.

Ms. Loftus said she worked with CMS attorneys and the Chief Procurement Officer for Higher Education Ben Bagby to draft the Fair Market Price language contained on the signature page of the vote sheets. Ms. Loftus said she felt they needed something in writing to ensure that the agencies were making pricing determinations because the State Use Committee has no authority to challenge an agency's determination that a bid is not substantially more. Ms. Loftus explained that it was not the intent of the language to make the agencies conduct market research, "they just needed to say that they have." Ms. Loftus said a good faith effort is acceptable because the Procurement Code does not require market research. Ms. Loftus said there was no way to verify the accuracy of the statements regarding sheltered workshops and agency pricing included in the Fair Market Price section, and the State Use Committee assumed the information was true.

#### **IV. ANALYSIS**

##### **A. IDOT Failed To Provide A Basis To Show That Contract Prices With Sheltered Workshops Were Fair And Reasonable And At A Price Not Substantially More Than Had The Contract Been Competitively Bid**

Under the Administrative Code, “prior to conducting a competitive procurement or otherwise contracting for supplies or services on the preference list, the State agency shall contact one or more of the sheltered workshops that provide the needed supply or service and attempt to negotiate a fair and reasonable contract at a price not substantially more than had it been competitively bid.”<sup>16</sup> This requirement is intended to ensure that the State agency is receiving a reasonable price for the services rendered, and provides that “if negotiations fail or circumstances suggest using a sheltered workshop is not reasonable, the SPO may authorize an alternative procurement method.”<sup>17</sup>

The investigation revealed that each year IDOT offers to renew sheltered workshop contracts at a percentage increase over the previous year’s contract. None of the IDOT employees interviewed as part of this investigation could explain how the historical contract price was determined, how the current prices correlated to the actual costs incurred by the sheltered workshops in providing services, or if the prices were substantially more than they would be if competitively bid. While IDOT has looked at the reasonableness of the increases as compared to the Consumer Price Index, the investigation could find no one that had ever looked at the reasonableness of the contract prices compared to what would be expected if the contracts were competitively bid. Moreover, when providing information to the State Use Committee, IDOT was clear that it had not done a market analysis to determine if the contract price was not substantially more than what would be expected if the contracts were competitively bid. While it is certainly possible that the prices IDOT pays to sheltered workshops are fair and reasonable as required by the Administrative Code, IDOT does not appear to have done anything to confirm this fact.

Inherent in the duty to negotiate a price that is “not substantially more than had it been competitively bid” is a duty to determine what the price would likely be if it were competitively bid. If IDOT does not know what price would be expected for these services through a competitive procurement, it cannot know whether it is negotiating a price that is not substantially more than the price that would be expected in a competitive bid. The OEIG spoke to multiple IDOT employees who were involved in the sheltered workshop contracting process and none of them could identify the employee responsible for ensuring the contract prices were not substantially more than had the contracts been competitively bid. For this reason, the OEIG is making a finding against IDOT. Therefore, the OEIG concludes that the allegation that IDOT failed to ensure that it was paying a price that was not substantially more than had it been competitively bid with regard to rest stop janitorial services contracts under the State Use Program is **FOUNDED**.<sup>18</sup>

**B. The State Use Committee Failed To Adequately Review And Determine Whether The Contract Prices Submitted By IDOT Were Not Substantially More Than If The Contracts Had Been Competitively Bid**

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<sup>16</sup> 44 Ill. Admin. Code, Part 1, Section 1.4535(c).

<sup>17</sup> *Id.*

<sup>18</sup> The OEIG concludes that an allegation is “founded” when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

Under the Procurement Code, “supplies and services may be procured without advertising or calling for bids from any qualified [sheltered workshops] for persons with severe disabilities” as long as the not-for-profit agency meets certain requirements and sets a “fair market price.”<sup>19</sup> One of the State Use Committee’s powers and duties is to “review all [contract prices] submitted under the provisions of [section 45-35 of the Procurement Code] and reject any [contract prices] for any purchase that is determined to be substantially more than the purchase would have cost had it been competitively bid.”<sup>20</sup>

The OEIG recognizes the importance of the Sheltered Workshop Program in providing gainful employment to people with disabilities and applauds the State Use Committee for its efforts in advancing this program. However, in the legislation creating the Sheltered Workshop Program, the Illinois General Assembly makes clear that the procurement of goods and services through the Sheltered Workshop Program should not cost the state substantially more than it would if the contracts were competitively bid, and the State Use Committee should review the contracts to ensure this is effectuated.

In her interview with the OEIG, Mitzi Loftus, the chairperson of the State Use Committee, explained that CMS attorneys had interpreted the Procurement Code to require the pricing determination to be done by the agencies seeking approval to contract with a sheltered workshop. However, the Administrative Rules of the Chief Procurement Officer for General Services clarify any ambiguity in the statutory language by stating that “the State Use Committee must determine that the price is not substantially more than a competitively solicited price.”<sup>21</sup> Read together, the Procurement Code and the Administrative Rules leave no doubt that the review of the pricing determination is ultimately a duty of the State Use Committee.<sup>22</sup> While the State Use Committee is free to put the onus of performing the research and providing the information on the agency requesting approval, as it did in the State Use Contract Request Form, the State Use Committee needs to verify that the information provided supports a determination that the price of the State Use Program contract is not substantially more than would be expected from a competitive bid. Both Acting CPO Ellen Daley and Former Senior Procurement Compliance Monitor Joel Meints confirmed that the State Use Committee has an obligation to review market research information prior to approving State Use Program contracts.

The State Use Committee approved each of the State Use Program requests that the OEIG reviewed based on very little pricing information. While the State Use Committee had the annual or the total contract prices to be paid to the sheltered workshops, they did not have any information to reflect the price for which those services could have been procured through a competitive bid. Although Ms. Loftus said she instituted changes to the program and began to require pricing information from the agencies before the State Use Committee approved contracts, in the cases the OEIG looked at IDOT merely stated that it was “highly confident” that a bid process would result in a higher price without providing any basis for that confidence.

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<sup>19</sup> 30 ILCS 500/45-35 (a) and (b).

<sup>20</sup> *Id.* at (c)(8).

<sup>21</sup> 44 Ill. Admin. Code, Part 1, Section 1.4535.

<sup>22</sup> A review of Section 1.4535 of the Administrative Rules of the Chief Procurement Officer for General Services for the last ten years reflects that the Administrative Code has consistently stated that the determination of prices to be a duty of the State Use Committee.

None of the IDOT requests the OEIG reviewed had any market research or analysis to show that the cost of the State Use Program contract was not substantially more than if the contracts had been competitively procured before it voted on the contracts. In the singular instance in which IDOT attempted to produce what it considered market analysis, the information was provided to the State Use Committee for consideration *after* the State Use Committee had already approved the contracts. Even in that case, the information provided related only to the amount of increase from the previous contract compared to the increase in the Consumer Price Increase. It contained no information reflecting the price for which the services could have been obtained through a competitive bid. None of the IDOT employees interviewed knew when, if ever, IDOT had made an effort to determine what the price of these services would be if procured competitively.

Contrary to the State Use Website's claim that "proposed purchases [in the State Use Program] are independently reviewed and approved by the State Use Committee to ensure the finest quality and pricing available"<sup>23</sup>, in the cases the OEIG reviewed, it appears that the State Use Committee did not perform any meaningful review of the price of the contracts compared to what could be expected from a competitive procurement. While it is possible that the State Use Program contracts provide the State with a price that is as good or better than what could be obtained through a competitive bid, there is no way the State Use Committee could have known this when it approved these contracts because no pricing information or market research had been done or provided. If the State Use Committee does not require an agency to provide a basis for its claim that the contract price is not substantially more than if it was competitively bid, it begs the question of purpose for the State Use Committee's review of the contract.

Therefore, the OEIG concludes that the allegation that the State Use Committee failed to adequately review and determine contract prices and make determinations that State Use Program contract prices presented for approval were not substantially more than if the contracts had been competitively procured as required by the Illinois Procurement Code is **FOUNDED**.

## V. RECOMMENDATIONS

As a result of its investigation, the OEIG concludes that there is **REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDINGS**:

- **FOUNDED** – IDOT failed to provide a basis to show that the price it was paying for janitorial services contracts under the State Use Program was not substantially more than had it been competitively bid.
- **FOUNDED** – State Use Committee failed to properly review contract prices and make determinations that State Use Program contract prices were not substantially more than if the contracts had been competitively bid as required by the Procurement Code.

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<sup>23</sup> State Use Website, <https://www.illinois.gov/cms/agency/stateuse/Pages/default.aspx>. (last visited January 5, 2016).

Based upon the evidence, the OEIG recommends that IDOT take steps to determine whether or not it is receiving services at prices that are not substantially more than they would have been had they been competitively bid for its Sheltered Workshop contracts.

The OEIG further recommends that the State Use Committee institute procedures to ensure that it properly reviews contract prices and requests pricing information and analysis in order to properly determine that the prices are not substantially more than if the contracts are competitively procured.

No further investigative action is warranted and this case is considered closed.

Date: June 3, 2016

Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
607 East Adams, 14<sup>th</sup> Floor  
Springfield, IL 62701

Salome Kiwara-Wilson  
Assistant Inspector General

William Parker  
Investigator #121





## Office of Executive Inspector General

for the Agencies of the Illinois Governor

[www.inspectorgeneral.illinois.gov](http://www.inspectorgeneral.illinois.gov)

### AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY RESPONSE FORM

Case Number: 15-01333

Return 20 Days After Receipt

Please check the box that applies. (Please attach additional materials, as necessary.)

☐ We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

☒ We will implement some or all of the OEIG recommendations but will require additional time to do so.

We will report to OEIG within 30 days from the original return date.

☐ We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:

BH  
Signature

BRUCE HARMENING  
Print Name

IDOT, BUREAU CHIEF  
Print Agency and Job Title

7-8-16  
Date



# Illinois Department of Transportation

Office of Finance and Administration / Bureau of Investigations and Compliance  
2300 South Dirksen Parkway / Springfield, Illinois 62764

CONFIDENTIAL

August 10, 2016

Ms. Margaret A. Hickey  
Acting Executive Inspector General  
Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
69 West Washington Street, Suite 3400  
Chicago, Illinois 60602

Re: OEIG Case No. 15-01333

Dear Ms. Hickey:

This letter responds to the Final Report for complaint number 15-01333 which contains a Founded allegation that IDOT failed to comply with administrative rules in issuing contracts to sheltered workshops. Your office found reasonable cause that IDOT failed to provide a basis to show that the price it was paying for janitorial services contracts under the State Use Program was not substantially more than had it been competitively bid.

As your office recommended, IDOT will take the necessary steps to make that determination. We anticipate having this procedure in place by September 10, 2016, and will update you at or before that time.

Thank you for your assistance concerning this matter. If you have any questions, or if I can be of assistance to you or your staff, please do not hesitate to contact me at 217-558-4617.

Respectfully,

A handwritten signature in black ink, appearing to read 'B. Harmening', with a long horizontal stroke extending to the right.

Bruce Harmening  
Bureau Chief



# Illinois Department of Transportation

Office of Finance and Administration / Bureau of Investigations and Compliance  
2300 South Dirksen Parkway / Springfield, Illinois 62764

CONFIDENTIAL

September 9, 2016

Ms. Margaret A. Hickey  
Acting Executive Inspector General  
Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
69 West Washington Street, Suite 3400  
Chicago, Illinois 60602

Re: OEIG Case No. 15-01333

Dear Ms. Hickey:

This letter responds to the Final Report for complaint number 15-01333 which contains a Founded allegation that IDOT failed to comply with administrative rules in issuing contracts to sheltered workshops. Your office found reasonable cause that IDOT failed to provide a basis to show that the price it was paying for janitorial services contracts under the State Use Program was not substantially more than had it been competitively bid.

As your office recommended, IDOT will take the necessary steps to make that determination. To develop a comparison to what the contract price would likely be if competitively bid, IDOT will develop a cost estimate based on similar staffing levels, using prevailing wage rates as applicable and commercially available supply costs. This estimate will be compared to the cost of the sheltered workshop contracts to ensure the costs are not substantially different.

Thank you for your assistance concerning this matter. If you have any questions, or if I can be of assistance to you or your staff, please do not hesitate to contact me at 217-558-4617.

Respectfully,

Bruce Harmening  
Bureau Chief



ILLINOIS

Bruce Rauner, Governor

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

Michael M. Hoffman, Acting Director

Sept. 1, 2016

Thomas Klein, Deputy Inspector General and Chief  
Office of Executive Inspector General, Springfield Division  
607 E. Adams, 14<sup>th</sup> Floor  
Springfield, IL 62701-1634

Re: OEIG Case No. 15-01333 – CMS Response to Final Report

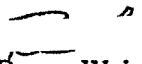
Dear Mr. Klein,

This letter responds to the Final Report your office issued on June 15, 2016 in connection with the above-referenced matter.

CMS agrees with the recommendation contained in the Final Report that the State Use Committee institute procedures to ensure that it properly reviews State Use Program contract prices and requests pricing information and analysis in order to properly determine that the pricing in State Use contracts is not substantially higher than if the contracts were competitively procured. In that regard, CMS will revise the State Use Contract Request Letter form so that the form requires the purchasing Agency to provide a greater level of detail as to each State Use procurement, including a detailed pricing breakdown, an explanation of how the contract price was determined, and a requirement that one of three specified research tasks has been completed to show the contract price is not substantially more than if the contract were competitively bid. These additional details will provide the Committee with a greater understanding of the supplies and/or services being procured and how the purchasing Agency arrived at the price presented.

If you have any questions or concerns, please do not hesitate to contact me at 314/814-0933 or [benno.weisberg@illinois.gov](mailto:benno.weisberg@illinois.gov). Thank you.

Sincerely,

  
Benno Weisberg  
Deputy General Counsel and Ethics Officer

cc: Michael M. Hoffman, Acting Director, CMS  
LaShonda Hunt, General Counsel, CMS



# Illinois Department of Transportation

Office of Chief Counsel  
2300 South Dirksen Parkway / Springfield, Illinois / 62764

December 9, 2016

Chad D. Fornoff  
Executive Director  
Executive Ethics Commission  
401 S. Spring Street  
513 William Stratton Building  
Springfield, IL 62706

RECEIVED  
DEC 9 2016

Sent via email to [Chad.Fornoff@Illinois.gov](mailto:Chad.Fornoff@Illinois.gov)

EXECUTIVE ETHICS COMMISSION

Re: IDOT response to release of OEIG report in In Re: Illinois Department of Transportation and State Use Committee (OEIG Case #15-01333)

Dear Mr. Fornoff:

In reply to your letter dated November 15, 2016, inviting IDOT's response to the proposed release by the Executive Ethics Commission of a redacted version of the OEIG report in OEIG case number 15-0133, please make the following response public if the summary report is also made public.

IDOT's policy preference and practice of awarding rest area janitorial services contracts to qualified not-for-profit agencies providing employment opportunities to people with severe disabilities ("sheltered workshops") is required by the Administrative Code and results in considerable cost savings to the taxpayers of Illinois.

The OEIG report contains no allegation or evidence to the contrary.

Rather, the issue raised by the OEIG is a finding that IDOT failed to provide sufficient detail in response to a question on an administrative form seeking information not required by law about "market research" into what in this case is a non-existent market. Because janitorial and other daily maintenance services at all rest areas in Illinois are currently provided by sheltered workshops, in accord with the preference provisions of the Administrative Code (explained further below), and because the locations at which those services are rendered are mostly geographically isolated, there is

no functionally comparable market context against which to compare the cost of providing services currently delivered by sheltered workshops.

The best that can be done is to compare those actual costs to a theoretical model of what the cost of those services would likely be were the contract to have been awarded as a result of competitive bidding. Such a hypothetical model would have to assume willingness of for-profit companies to bid were there no preference for awarding the contracts to not-for-profit sheltered workshops.

There are two main reasons why IDOT did not create such a theoretical market model in the past: (1) the reasonableness of the cost of IDOT's contracts with sheltered workshops was sufficiently clear to experienced IDOT contract management personnel that they deemed it unnecessary; and (2) because the body authorizing the sheltered workshop contracts, the State Use Committee (SUC), authorized the contracts without requiring IDOT to provide that level of analytical detail.

Moving forward, and in light of the OEIG's findings, IDOT will provide the SUC with greater analytical detail to support its finding that the cost of proposed contracts with sheltered workshops are reasonable under the statutory standard. As for current contracts, this response addresses their reasonableness below.

#### The Statutory Standard

The Procurement Code provides, "Supplies and services may be procured without advertising or calling for bids from any qualified not-for-profit agency for persons with severe disabilities that ... is certified as a sheltered workshop ...."<sup>1</sup> It goes on to provide that it is the duty of the SUC to "review all bids submitted under the provisions of this Section and reject any bid for any purchase *that is determined to be substantially more than the purchase would have cost had it been competitively bid.*"<sup>2</sup> (Emphasis added)

In fulfilling that duty, the SUC is authorized, in its discretion, to "request from any State agency information as to product specification and service requirements in order to carry out its purpose."<sup>3</sup>

As noted in the OEIG report, the Administrative Code goes a step further by stating that the Chief Procurement Officer for General Services shall identify to each State Purchasing Officer and State agency the supplies or services for which preference "must" be given to sheltered workshops.<sup>4</sup>

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<sup>1</sup> 30 ILCS 500/45-35(a)

<sup>2</sup> *Id.*, 45-35(c)(8)

<sup>3</sup> *Id.*, 45-35(c)(1)

<sup>4</sup> 44 Ill. Admin. Code, Part 1, Section 1.4535(c)

The Administrative Code then goes on to state:

Prior to conducting a competitive procurement or otherwise contracting for supplies or services on the preference list, the State agency shall contact one or more of the sheltered workshops that provide the needed supply or service and attempt to negotiate a fair and reasonable contract *at a price not substantially more than had it been competitively bid*. If negotiations fail or if circumstances suggest using a sheltered workshop is not reasonable, the SPO [State Purchasing Officer] may authorize use of an alternative procurement method. (Emphasis added)

Based on that combination of provisions, the statutory standard with which IDOT and the SUC are required to comply is that contracts for rest area services must be awarded to sheltered workshops unless the cost is substantially more than what would be expected were the contract to be awarded by competitive bidding.

That must/unless standard means the statutory burden on IDOT and the SUC is not to demonstrate the reasonableness of proposed costs of service contracts with sheltered workshops, but rather the reverse: to demonstrate their unreasonableness if some reasonable basis exists to believe the price of contracting with a sheltered workshop is “substantially more” than would result had the contract been competitively bid.

IDOT is unaware of any reasonable basis to believe the cost of its rest area service contracts with sheltered workshops are higher, much less substantially higher, than what could reasonably be expected to result from competitive bidding. Nor does the OEIG report suggest any basis exists for such a conclusion.

On the contrary, based on the long experience of IDOT’s contract management and auditing personnel and available information about prevailing wage rates, typical overhead rates, and supply costs, it is IDOT’s firm position and good faith belief that the cost of its rest area service contracts with sheltered workshops are substantially less than the cost would have been had the contracts been awarded through competitive bidding.

Therefore, it is IDOT’s position that it has fully met the statutory standards for entering into its existing and past rest area contracts with sheltered workshops, and was statutorily required to enter into those contracts.

#### Added Administrative Requirement

The issue raised in the OEIG report is whether IDOT adequately complied with an additional administrative requirement of the SUC, not required by statute, stated in its form entitled the “State Use Contract Request Letter.” One question asked by the SUC in that form reads: “For the Committee’s

review required by 30 ILCS 500/45-35(c)(8), please explain the Agency's determination that the Proposed Price is not substantially more than a price obtained through competitive bidding. This explanation should include a descriptive summary of the Agency's market research used to arrive at the determination."

(Note that the statutory citation refers to the Committee's duty to review, not to a requirement that the review include requesting information about market research.)

For the reasons already stated above, there is no functionally comparable market for services at rest areas for IDOT to research, only data points from which a rough theoretical model can be created of what such market prices would likely be were contracts for such services to be awarded based on competitive bidding in a hypothetical context in which no statutory preference existed for awarding such contracts to sheltered workshops.

In view of the OEIG's findings, IDOT has now conducted such an analysis, described below, and will provide a comparable level of analytical detail to the SUC in the future if the SUC approval request form continues to request "market research."

#### IDOT Market Analysis

The first level of analysis is with regard to prevailing wage rates for janitorial services in the counties in which rest areas are located. For purposes of this response, corresponding with the geographical area specifically covered by the OEIG report, IDOT looked at Illinois Department of Labor data regarding prevailing wage rates in the counties in which five rest areas are located in IDOT District 9. In every instance, the calculated wage rates of sheltered workshop workers as described in the current service contracts<sup>5</sup> was substantially below the prevailing wage for janitorial services in those counties.

The second level of analysis was with regard to overhead costs. Based on IDOT audit experience, the typical services contract cost for overhead is rarely below 50 percent. The average overhead cost stated in the sheltered workshop contracts in District 9 range from 3 to 28 percent.

The third level of analysis was with regard to supply costs. In four of the five contracts, the stated cost of supplies (averaging \$22,713 per site) was substantially lower than the projected cost of supplies, calculated based on an unrelated IDOT contract for supplies (averaging \$36,430). At one site, the contract cost for supplies was \$22,000 while the estimated market cost was \$20,817, a difference considered to be insubstantial.

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<sup>5</sup> Calculated as total worker cost divided by number of workers divided by number of hours of work described in the contracts.



### Conclusion

IDOT will submit greater justifying cost detail in future requests to the SUC for approval of rest area service contracts.

In the meantime, all available data and the experience of IDOT contract management and auditing personnel support a conclusion that the cost of current and past contracts with sheltered workshops are substantially below what the cost of such services would be were such contracts to be awarded as a result of competitive bidding absent a statutory preference for awarding them to sheltered workshops.

IDOT's policy and practice of awarding rest area service contracts to sheltered workshops complies with the Procurement and Administrative Codes, and serves the best interests of the disabled persons who are benefited by those contracts and the taxpayers of the State of Illinois.

Sincerely,

  
David E. Risley  
Senior Assistant Chief Counsel and Ethics Officer